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Filing date: **08/14/2009**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91185498
Party	Defendant Barr, Denise Marie
Correspondence Address	DENISE MARIE BARR 11540 Velicata Court Las Vegas, NV 89138 UNITED STATES denise@deebarr.com
Submission	Testimony For Defendant
Filer's Name	Denise M. Barr
Filer's e-mail	denise@deebarr.com
Signature	/Denise M. Barr/
Date	08/14/2009
Attachments	TrialAffidavitSigned.pdf (4 pages)(283585 bytes) Exhibits1-9.pdf (10 pages)(4988471 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEALS BOARD

THE TJX COMPANIES, INC.,)	
)	
Opposer,)	
)	
V.)	Opposition No. 91185498
)	
DENISE MARIE BARR,)	
)	
Applicant)	
_____)	

APPLICANT’S TRIAL TESTIMONY AFFIDAVIT

AFFIANT IS HEREBY RECOGNIZED AS THE APPLICANT IN THIS DOCUMENT

INDEX OF THE EXHIBITS

Exhibit 1.	Scan of the package sent to me, which contained Opposer’s Trial Deposition	Page 2
Exhibit 2.	Opposer’s application to register the trademark, “The New It Bag,” serial #77323233	Page 2
Exhibit 3.	Response to the Opposer from the USPTO, regarding application serial #77323233	Page 2
Exhibit 4a.	TJ maxx’s web site forum displaying “The New It Bag” for sale	Page 2
Exhibit 4b.	TJ maxx’s web site forum displaying “The New It Bag” for sale, detail	Page 2
Exhibit 5.	USPTO document showing the date of original Application for “It Bag.”	Page 2
Exhibit 6.	Wikipedia Disclaimer	Page 3
Exhibit 7.	Web site page of www.dreamitwear.com, which describes the Applicant’s “It Bag”	Page 3
Exhibit 8.	Approval from the USPTO to register the trademark, “It Cosmetics,” pending opposition	Page 3
Exhibit 9.	Approval from the USPTO to register the trademark, “It Bag,” pending opposition	Page 3

1. I, the Applicant, would like the Board to notice, and take appropriate action regarding the fact that the attorneys for TJX, the Opposer, sent to me their Trial Deposition more than 30 days after it was taken. The Deposition was taken on June 22, 2009, and sent on August 3, 2009, via first class mail, not next day. I received these papers on August 10, seven days into my testimony period. If necessary, I do have a witness who can confirm this fact.

Ref: Exhibit 1, a scan of the package I received, which contained the herein mentioned Deposition.

2. May it be on the record that the Opposer's main brief totals 94 pages, and that if a timely motion for leave with the Board for this excess has been filed, I have not been made aware of it. I therefore request that the Opposer's brief be stricken from the record in accordance with 37 CFR § 2.128(b).

37 CFR § 2.128(b) ... Without prior leave of the Trademark Trial and Appeal Board, a main brief on the case shall not exceed fifty-five pages in length in its entirety,...

In Chapter 500 of the TBMP, STIPULATIONS AND MOTIONS: If a party files a brief that exceeds the page limit, but does not file a timely motion for leave to file such a brief, the brief will be stricken, without leave to file a substitute brief that meets the limit.⁵⁰⁵

3. I would like the Board to notice that Page 30 of the Opposer's trial deposition is missing. If the Board does have this page, and deems it to be evidence that proves my trademark to be unregistrable, then I shall request a copy of that page. If the page proves to be irrelevant, I will not request a copy of that page, since prolonging this case would not be in my best interest.
4. I believe documentation on file with USPTO regarding the Opposer's application to register the trademark, "The New It Bag," serial #77323233 on November 7, 2007, proves that the sole reason for opposing my trademark application, "It Bag", was to disqualify my application, which I originally submitted on October 11, 2007, therefore enabling the Opposer to register "The New It Bag", and not for any other reason. The Opposer's application was suspended by the USPTO pending the disposition of my application. I also assert that if the Opposer truly believes that the "It Bag" trademark was unregistrable, then the Opposer would not have attempted to register the similar trademark, "The New It Bag." Further proof in support of my belief is the fact that TJX had for sale, a bag at their TJ maxx stores which carries the trademark, "The New It Bag." Exhibits 4a and 4b are computer screen shots I took with my computer on December 30, 2008 of TJ maxx's web site forum post dated October 25, 2008 at 9:36 p.m. I can no longer find this post.

Ref: Exhibits 2, 3, 4a, 4b, and 5.

5. Statement regarding TMEP, Section 1209.02, "Procedure for Descriptiveness and/or Genericness Refusal". If the Board decides to allow the Opposer's evidence in this case, I assert that all of the Opposer's Exhibits, except for Conduah Exhibit 2, submitted into evidence, are related to the fashion media only, not the general news or factual information media, and therefore not reliable sources to determine genericness. The term "It" Bag, used occasionally by the fashion media does not prove that this term is widely used by the general public, and/or accepted as a generic term so much as to confuse the public into believing anything particularly specific about the product produced under the trademark, "It Bag". Terms such as "It Bag", "It Cosmetics", and "It Shoe", are whimsical terms that do not have the credibility nor specificity as to become a part of the common language.

6. Regarding the Opposer's Conduah Exhibit 2, Wikipedia printout. I assert that Wikipedia is not a reliable source: http://en.wikipedia.org/wiki/Wikipedia:General_disclaimer.

Ref: Exhibit 6.

6. According to Section 1212.05(c) "Double Entendre," "It Bag" is a play on the term "It Girl," as well as the acronym "IT" (Information Technology). I believe this additionally ensures that my trademark, "It Bag", is registrable. The web site pages for www.dreamitwear.com currently online describes the features of the bag that I have produced under the trademark "It Bag." "It Bag" is a handbag that can be converted into a backpack, and has compartments for electronic technologies such as a laptop, cell phone, and music player: http://dreamitwear.com/Dreamitwear_shop1.html

Ref: Exhibit 7.

8. As documented in the USPTO, the trademark "It Cosmetics" has been approved for registration, pending opposition. I believe that the term "It Cosmetics" falls under the same TMEP rules for registration as "It Bag".

Ref: Exhibit 8.

7. I assert that the Trademark Board has already approved my trademark, "It Bag", pending any opposition, and has therefore deemed it registrable. This fact logically presumes that the Board has already reviewed the possible "genericness" of the name "It Bag", and has determined that it is not, in fact, a generic term.

Ref: Exhibit 9.

8. I, the Applicant, respectfully request that the Opposition's case against me, the Applicant, be dismissed by the Board, "with prejudice."

THIS DOCUMENT HAS BEEN RESPECTFULLY SUBMITTED, AND SIGNED BY THE APPLICANT, UNDER OATH THAT EVERYTHING HEREIN IS TRUE, UNDER PENALTY OF LAW, WITH WITNESS MICHAEL J. MARTINET.

Denise M. Barr
Applicant, Denise M. Barr
11540 Velicata Court, Las Vegas, NV 89138

8/13/09
Date

Michael J. Martinet
Witness, Michael J. Martinet
9309 Buckhaven Drive, Las Vegas, NV 89117

8/13/09
Date

CERTIFICATE OF SERVICE

I certify that the foregoing "Applicant's Trial Testimony Affidavit" was served on Opposer by mailing a copy of same by U.S. first class mail, postage prepaid, on the 14th day of August, 2009, to Larry C. Jones, attorney for TJX Companies, addressed as follows:

ALSTON & BIRD, LLP
Attn: Larry C. Jones
Bank of America Plaza
101 S. Tryon Street, Suite 4000
Charlotte, NC 28280

Denise M. Barr
Applicant, Denise M. Barr

8/14/09
Date

State of Nevada
County of Clark

Personally appeared before me, Denise M. Barr, on
August 13, 2009.

Leslie S. Miramon
Notary Public

My Commission Expires on: July 11, 2010

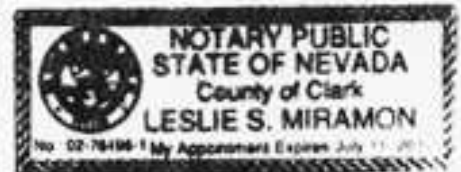



EXHIBIT 1

PROVIDED BY APPLICANT, IN THE MATTER OF THE TJX COMPANIES, INC
V. DENISE MARIE BARR OPPOSITION NO. 91185498



EXHIBIT 2

PROVIDED BY APPLICANT, IN THE MATTER OF THE TJX COMPANIES, INC
V. DENISE MARIE BARR OPPOSITION NO. 91185498

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the new
it
bag

Word Mark THE NEW IT BAG
Goods and Services IC 018. US 001 002 003 022 041. G & S: Reusable non-woven polypropylene shopping bags
Mark Drawing Code (5) WORDS, LETTERS, AND/OR NUMBERS IN STYLIZED FORM
Serial Number 77323233
Filing Date November 7, 2007
Current Filing Basis 1B
Original Filing Basis 1B
Owner (APPLICANT) The TJX Companies, Inc. CORPORATION DELAWARE 770 Cochituate Road Framingham MASSACHUSETTS 01701
Attorney of Record Martha Gayle Barber
Disclaimer NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE NEW AND BAG APART FROM THE MARK AS SHOWN
Description of Mark Color is not claimed as a feature of the mark. The mark consists of the words THE NEW IT BAG in a stylized form.
Type of Mark TRADEMARK
Register PRINCIPAL
Live/Dead Indicator LIVE

EXHIBIT 3

PROVIDED BY APPLICANT, IN THE MATTER OF THE TJX COMPANIES, INC
V. DENISE MARIE BARR OPPOSITION NO. 91185498

Document Description: Suspension Letter
Mail / Create Date: 27-Jun-2008

Previous Page Next Page You are currently on page 1 of 2

To: The TJX Companies, Inc. (martha.barber@alston.com)
Subject: TRADEMARK APPLICATION NO. 77323233 - THE NEW IT BAG - 46788/334033
Sent: 6/27/2008 9:38:30 AM
Sent As: ECOM110@USPTO.GOV
Attachments:

UNITED STATES PATENT AND TRADEMARK OFFICE

<p>SERIAL NO: 77/523233</p> <p>MARK: THE NEW IT BAG</p> <p>CORRESPONDENT ADDRESS: MARTHA GAYLE BARBER ALSTON & BIRD LLP 101 S TRYON ST STE 4000 CHARLOTTE, NC 28280-4000</p> <p>APPLICANT: The TJX Companies, Inc.</p> <p>CORRESPONDENT'S REFERENCE/DOCKET NO: 46788/334033</p> <p>CORRESPONDENT E-MAIL ADDRESS: martha.barber@alston.com</p>	<p style="font-size: 24pt; font-weight: bold;">*77323233*</p> <p>GENERAL TRADEMARK INFORMATION: http://www.uspto.gov/main/trademarks.htm</p>
---	---

NOTICE OF SUSPENSION

ISSUE/MAILING DATE: 6/27/2008

SUSPENSION PROCEDURE: This suspension notice serves to suspend action on the application for the reason(s) specified below. No response is needed. However, if you wish to respond to this notice, you should use the "Response to Letter of Suspension" form found at <http://teasros.uspto.gov/rsi/rsi>. The Office will conduct periodic status checks to determine if suspension remains appropriate.

Action on this application is suspended pending the disposition of:

- Application Serial No(s): **77301887**

Since applicant's effective filing date is subsequent to the effective filing date of the above-identified application(s), the latter, if and when it registers, may be cited against this application in a refusal to register under Section 2(d) of the Trademark Act, 15 U.S.C. §1052(d). See 37 C.F.R. §2.83; TMEP §§1208 et seq. A copy of information relevant to this pending application(s) was sent previously.


Applicant may submit a request to remove the application from suspension to present arguments related to the potential conflict between the relevant application(s) or other arguments related to the ground for suspension. TMEP §716.03. Applicant's election not to present arguments during suspension will not affect the applicant's right to present arguments later should a refusal in fact issue. If a refusal does issue, applicant will be afforded 6 months from the mailing or e-mailing date of the Office action to submit a response. 15 U.S.C. §1062(b); 37 C.F.R. §2.62.

/Sani Khouri/
Examining Attorney
Law Office 110
571-272-5884- Phone
571-273-9110- Fax


STATUS CHECK: Check the status of the application at least once every six months from the initial filing date using the USPTO Trademark Applications and Registrations Retrieval (TARR) online system at <http://tarr.uspto.gov>. When conducting an online status check, print and maintain a copy of the complete TARR screen. If the status of your application has not changed for more than six months, please contact the assigned examining attorney.

EXHIBIT 4a

PROVIDED BY APPLICANT, IN THE MATTER OF THE TJX COMPANIES, INC
V. DENISE MARIE BARR OPPOSITION NO. 91185498



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TIME FOR HOLIDAY SHOPPING

It's that time again, time for holiday shopping. Here at T.J. Maxx we have been busy getting ready for the holidays, and we promise that you will discover some terrific finds in our stores. Read about what others are discovering and share your own strategies for having a fabulous, yet frugal, 2008 holiday season.

THE NEW IT BAG [REPLIES: 2]


Last Post Nov 12, 2008 8:15 AM by: [WhatsInHost_Heidi](#)


[WhatsInHost_Dream](#)


Posts: 486
From: Alabama
Registered: 5/21/08

The New IT Bag

Oct 25, 2008 9:36 PM

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[IT bag .99.JPG \(1.2 MB\)](#)







(1 of 3)

EXHIBIT 4b

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V. DENISE MARIE BARR OPPOSITION NO. 91185498

THE NEW IT BAG [REPLIES: 2]
Last Post Nov 12, 2008 8:15 AM by: [WhatsInHost Heidi](#)

[WhatsInHost Dream](#)


Posts: 486
From: Alabama
Registered: 5/21/08

The New IT Bag
Oct 25, 2008 9:36 PM
[Report Abuse](#)

[IT bag .99.JPG](#) (1.2 MB)


Has anyone else seen the new reusable IT bag at their local store? For a mere .99 you can have an awesome reusable shopping bag with the T J Maxx logo. I grabbed one up on my last visit and look forward to filling it on future shopping trips. 😊

What are your thoughts on the reusable shopping bags?

Tammy

(1 of 3)

EXHIBIT 5

PROVIDED BY APPLICANT, IN THE MATTER OF THE TJX COMPANIES, INC
V. DENISE MARIE BARR OPPOSITION NO. 91185498

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IT BAG
Word Mark IT BAG
Goods and Services IC 018: US 001 002 003 022 041: G & S: Travel bags; Multi-purpose purses; Purses
Mark Drawing Code (5) WORDS, LETTERS, AND/OR NUMBERS IN STYLIZED FORM
Serial Number 77301887
Filing Date October 11, 2007
Current Filing Basis 1B
Original Filing Basis 1B
Published for Opposition April 1, 2008
Owner (APPLICANT) Barr, Denise Marie INDIVIDUAL UNITED STATES 11540 Vellicata Court Las Vegas NEVADA 89138
Disclaimer NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "BAG" APART FROM THE MARK AS SHOWN
Description of Mark The color(s) black and gray is/are claimed as a feature of the mark. The mark consists of Capital "I" with lower case "t" on first line, and "BAG" in all caps on second line. The "I" and "BAG" are in black and the "t" is in gray.
Type of Mark TRADEMARK
Register PRINCIPAL
Live/Dead Indicator LIVE

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EXHIBIT 6

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V. DENISE MARIE BARR OPPOSITION NO. 91185498

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EXHIBIT 7

PROVIDED BY APPLICANT, IN THE MATTER OF THE TJX COMPANIES, INC
V. DENISE MARIE BARR OPPOSITION NO. 91185498

Dream It Wear

http://dreamitwear.com/Dreamitwear_shop1.html

Apple (133) State of New York web site Google eBay News (1733)

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It BAG

Made with care in the U.S.A.

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Video Demo

What is ItBag?

ItBag™ is a ladies' designer handbag, tech bag, back pack, and evening purse—all in one.* It's perfect for business travel, commuting, campus, or all-day excursions.

What makes ItBag so different?

ItBag is constructed with leather, high quality hardware including Riri zippers, and cleanable fabrics. Check out ItBag's many great features:

Outside

- Washable hidden drop-down shoe or sweater compartment.
- Padded exterior laptop compartment in back.
- Large zippered compartment in front.
- Side zip-up pockets with cord eyelets for small electronics.
- The large ItBag comes with a silver metal logo key chain that hooks to rings outside, and inside.

Inside

- Zippered water-repellent insulated snack compartment.
- Key chain ring • Sunglass holder.
- Place for pens, and two more pouches.
- Business card holder.

From Handbag to Backpack

ItBag's strap can be unsnapped, to create a backpack.

Need a smaller version?

ItBag also offers a coordinating "purslet" that fits easily into the outside zipper pouch. It's a small purse with wallet features on the inside. It has a place for credit cards, coins, cash, passport, makeup, and cell. Perfect for going out to lunch, but dressy enough for evenings out while on a business trip or vacation.

Going green?

ItBag "green" is made of mostly organic cotton and hemp. We are researching...



EXHIBIT 8

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V. DENISE MARIE BARR OPPOSITION NO. 91185498

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Serial Number: [77346847 Assignment Information](#) [Trademark Document Retrieval](#)

Registration Number: (NOT AVAILABLE)

Mark



(words only): [IT COSMETICS](#)

Standard Character claim: [No](#)

Current Status: [Application has been published for opposition.](#)

Date of Status: [2009-07-13](#)

Filing Date: [2007-12-07](#)

The Information will be/was published in the Official Gazette on [2009-02-24](#)

Transformed into a National Application: [No](#)

Registration Date: (DATE NOT AVAILABLE)

Register: [Principal](#)

Law Office Assigned: [LAW OFFICE 106](#)

Attorney Assigned:
[RICHARDS LESLIE L](#)

Current Location: [650 -Publication And Issue Section](#)

Date In Location: [2009-07-13](#)

LAST APPLICANT(S)/OWNER(S) OF RECORD

EXHIBIT 9

PROVIDED BY APPLICANT, IN THE MATTER OF THE TJX COMPANIES, INC
V. DENISE MARIE BARR OPPOSITION NO. 91185498



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451
www.uspto.gov

Mar 12, 2008

NOTICE OF PUBLICATION UNDER 12(a)

- | | |
|-------------------------------------|-------------------------------------|
| 1. Serial No.:
77/301,887 | 2. Mark:
IT BAG
(Stylized) |
| 3. International Class(es):
18 | |
| 4. Publication Date:
Apr 1, 2008 | 5. Applicant:
Barr, Denise Marie |

The mark of the application identified appears to be entitled to registration. The mark will, in accordance with Section 12(a) of the Trademark Act of 1946, as amended, be published in the Official Gazette on the date indicated above for the purpose of opposition by any person who believes he will be damaged by the registration of the mark. If no opposition is filed within the time specified by Section 13(a) of the Statute or by rules 2.101 or 2.102 of the Trademark Rules, the Commissioner of Patents and Trademarks may issue a notice of allowance pursuant to section 13(b) of the Statute.

Copies of the trademark portion of the Official Gazette containing the publication of the mark may be obtained from:

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PO Box 371954
Pittsburgh, PA 15250-7954
Phone: 202-512-1800

By direction of the Commissioner.